

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

April 6, 1999

MAINE HEALTH AND HIGHER EDUCATIONAL
FACILITIES AUTHORITY D/B/A MAINE
POWEROPTIONS
Application for License to Operate as a
Competitive Electricity Provider

Docket No. 99-162

PUBLIC UTILITIES COMMISSION
Registrants to Market Retail Electric Power

Docket No. 97-400

ORDER GRANTING LICENSE
AND TERMINATING
REGISTRATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we license the Maine Health and Higher Educational Facilities Authority (MHHEFA) to operate as a competitive electricity provider furnishing aggregator/broker services in Maine pursuant to Chapter 305 of the Commission's Rules.

II. APPLICATION

On March 11, 1999, the Maine Health and Higher Educational Facilities Authority d/b/a Maine PowerOptions (MHHEFA) applied to the Commission for a license to operate in Maine as a competitive electricity provider, as provided in Chapter 305, which became effective on February 8, 1999. On March 19, 1999, MHHEFA filed additional information to supplement its earlier filing.

A. Application Sufficient

The Administrative Director determined that MHHEFA's application was complete and sufficient to meet the filing requirements of Chapter 305, and docketed the application in this proceeding on March 11, 1999.

B. Type of Service Proposed

MHHEFA proposes to act as an aggregator or broker for electric service provided to the public at retail. MHHEFA's application states that the proposed licensee plans to market aggregation services to non-profit healthcare and higher educational institutions (including the University of Maine System) in all customer rate classes in transmission and distribution utility service territories throughout all counties in Maine.

C. Fee Paid

With its application, MHHEFA paid a \$100 fee to the Commission, as required by section 2(C)(5) of Chapter 305.

III. FINANCIAL ISSUES

A. Security

MHHEFA will operate as an electricity broker/aggregator in Maine. Pursuant to section 2(B)(1)(a)(i) of Chapter 305, MHHEFA does not need to furnish a security instrument to the Commission.

B. Showing of Professional and Financial Capability

MHHEFA will operate as an electricity broker/aggregator in Maine, and accordingly is required to demonstrate its professional responsibility pursuant to section 2(B)(1)(b) of Chapter 305. MHHEFA filed a copy of its audited 1998 financial statements including its income statement, balance sheet, statement of cash flows, notes to financial statements and an unqualified auditor's opinion letter. In addition, MHHEFA filed a copy of its current Bylaws to demonstrate its professional responsibility. We have reviewed that information and find that it complies with requirements of Chapter 305. MHHEFA stated that it will not hold retail customer funds, and accordingly is not required to demonstrate its financial capability pursuant to section 2(B)(1)(b) of Chapter 305. In the event MHHEFA wishes to hold customer funds in the future, it must first obtain authority from the Commission.

IV. TECHNICAL ISSUES

A. Showing of Technical Capability

MHHEFA will operate as an electricity broker/aggregator in Maine, and accordingly is required to demonstrate its technical fitness to conduct its proposed business pursuant to section 2(B)(2)(c) of Chapter 305. MHHEFA filed supporting

information to demonstrate its technical capability. We have reviewed that information and find that it complies with requirements of Chapter 305.

B. Renewable Resource Portfolio

MHHEFA will operate as an electricity broker/aggregator in Maine. Pursuant to section 2(B)(4) of Chapter 305, MHHEFA is not required to demonstrate an ability to meet the renewable resource portfolio requirement of 35-A M.R.S.A. § 3210 and the portfolio requirement reporting rules in Chapter 311 of the Commission's rules.

V. CONSUMER PROTECTION ISSUES

A. Showing of Fitness

In its application, MHHEFA provided information required by Chapter 305 § 2(B)(3) related to enforcement proceedings and customer complaints. We have reviewed that information and find that it meets requirements of Chapter 305.

B. Ability to Comply with Consumer Protection Rules

MHHEFA provided information demonstrating its ability to comply with the applicable consumer protection requirements of Chapter 305 and other consumer protection requirements pursuant to state law and 35-A M.R.S.A. Chapter 32. We have reviewed that information and find that it meets the requirements of Chapter 305.

C. Do-Not-Call List

Chapter 305 § 4(I) states that "[t]he Commission will maintain or cause to be maintained a 'Do-Not-Call' list of customers who have requested -- orally, in writing, or by commercially accepted electronic means -- that they not receive telemarketing calls from competitive electricity providers." We will require that licensees use do-not-call list mechanisms already in place nationally to satisfy that requirement. To the extent that it telemarkets to Maine consumers, MHHEFA shall comply with the following requirements.

MHHEFA must comply with the requirements of the Telephone Consumer Protection Act,¹ the Telemarketing and Consumer Fraud and Abuse Prevention Act,² and related rules of the Federal Communications Commission³ and Federal Trade Commission.⁴ MHHEFA must comply with those requirements and must maintain its own do-not-call list as required by those laws and rules, for all intrastate and interstate

¹ 47 U.S.C. § 227

² 15 U.S.C. §§ 6101-6108

³ 47 CFR 64.1200

⁴ FTC Telemarketing Sales Rule, 16 CFR Part 310

telemarketing of Maine consumers, including both residential and business customers. MHHEFA shall not telemarket to Maine customers on that list, as required by 10 M.R.S.A. § 1499(1) and in Chapter 305 § 4(I)(1). MHHEFA shall update its do-not-call list at least monthly, and maintain copies of that list for at least six months. MHHEFA shall provide a copy of that list to the Commission upon request.

Further, each month, MHHEFA must obtain listings of Maine consumers who have arranged to be included on the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc.⁵ MHHEFA shall not telemarket to Maine customers on that list, as required in Chapter 305 § 4(I)(1).

VI. ADDITIONAL PROVISIONS

MHHEFA must comply with all applicable requirements and limitations in Chapter 305 not explicitly waived in this Order. MHHEFA must also comply with all requirements and limitations in other applicable Commission rules, including any applicable future changes in Maine laws and Commission rules, and in other parts of this Order.

VII. REGISTRATION

On January 27, 1999, MHHEFA registered with the Commission to market retail electric service pursuant to 35-A M.R.S.A. § 3142, in Docket No. 97-400. The license we grant in this Order supersedes that registration. Any contracts for retail electric service entered into by MHHEFA after June 10, 1997 and before the date of MHHEFA's registration are void, as provided in 35-A M.R.S.A. § 3142(3) and (3-A). Contracts for retail electric service entered into by MHHEFA on or after the date of MHHEFA's registration (January 27, 1999), and on or before the date of this Order, are not void if they comply with the requirements of Chapter 305 and the license granted by this Order.

VIII. ORDERING PARAGRAPHS

Accordingly, we

1. license the Maine Health and Higher Educational Facilities Authority d/b/a Maine PowerOptions to operate as a competitive electricity provider in Maine; under this license, the Maine Health and Higher Educational Facilities Authority d/b/a Maine PowerOptions may operate only as an aggregator/broker, as defined in Chapter 305 of the Commission's Rules;

⁵Telephone Preference Service, Direct Marketing Association, Inc., P.O. Box 9014, Farmingdale, NY 11735-9014

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.